



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 29 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5954 6031

Mayor Judy Kennedy
City of Newburgh
83 Broadway
Newburgh, New York 12550

Re: **City of Newburgh
Order to Show Cause
Docket No. CWA-02-2012-3031
SPDES Permit No. NY0026310**


Dear Mayor Kennedy:

The United States Environmental Protection Agency ("EPA"), Region 2, has made a finding that the City of Newburgh located at 83 Broadway, Newburgh, NY is in violation of the Clean Water Act (33 U.S.C. § 1251 et seq) ("CWA" or "Act") for failure to comply with the Request for Information ("RFI") issued on October 4, 2011, pursuant to Section 308 of the CWA. Enclosed are two (2) originals of Order CWA-02-2012-3031 issued pursuant to Section 309 of the CWA, which details the findings.

Please acknowledge receipt of this Order by signing one of the original Orders on the acknowledgement page and returning the acknowledgement page along with one of the original copies of the Order by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject the Respondent to civil/criminal penalties pursuant to Section 309 of the CWA and subject the Respondent to ineligibility for participation in work associated with Federal contracts, grants or loans.

If you have any questions regarding this Order, please contact Mr. Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Joe DiMura, NYSDEC (w/enclosure)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

City of Newburgh
83 Broadway
Newburgh, NY 12550

SPDES Permit No. NY0026310

Proceeding pursuant to Section 309(a) of
The Clean Water Act, 33 U.S.C. §1319(a)

RESPONDENT

**ORDER TO
SHOW CAUSE**

CWA-02-2012-3031

The following Order to Show Cause ("Order") is issued pursuant to Section 309(a)(3) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2, and since further redelegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.

A. Legal Authority

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

4. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) to include an individual, corporation, partnership, association or municipality.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6) to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) to include the waters of the United States.
8. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12) to include any addition of any pollutant to navigable waters from any point source.
9. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14) to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
10. "Permit" means the NYSDEC SPDES Discharge Permit defined by the permit number NY0026310. The Permit was issued by the NYSDEC, pursuant to Section 402 of the CWA, and became effective on July 1, 2008 and will expire on June 30, 2013.
11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person/agency is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, the EPA shall require the submission of any information reasonably necessary to make such a determination.
12. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, Section 308(a) of the CWA, 33 U.S.C. § 1318(a), or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. Findings

1. The City of Newburgh ("Newburgh" or "Respondent"), is organized and exists under the laws of the State of New York, and is located in Newburgh, New York. Newburgh has authority and control over the sewer system within its boundaries, including but not limited to, authority and control over the combined sewer system, and the related wastewater treatment plant.
2. Newburgh is a "municipality" and "person" within the meaning of Sections 502(4) and 502(5) of the CWA, 33 U.S.C. §§ 1362(4) and 1362(5).

3. At all times relevant, Newburgh has discharged and continues to discharge “pollutants” within the meaning of Sections 502(6) and 502(12) of the CWA, 33 U.S.C. §§ 1362(6) and 1362(12), from the Newburgh wastewater treatment plant and sewer system through “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14) into the Hudson River, a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
4. The NYSDEC, under the authority of Section 402(b) of the CWA, § 1342(b), issued SPDES Discharge Permit No. NY0026310 (“Permit”) to Newburgh, with an effective date of July 1, 2008 and an expiration date of June 30, 2013. The Permit authorizes Newburgh to discharge pollutants from a single wastewater treatment plant outfall and from twelve (12) combined sewer overflow structures (“CSO structures”) at locations specified in the Permit, subject to certain limitations and conditions.
5. EPA issued a Request for Information (“RFI”) (CWA-IR-12-001) on October 4, 2011 to Newburgh, pursuant to Section 308 of the CWA, requiring Newburgh to submit information regarding CSO Long Term Control Plan (“LTCP”) development and sewer backups within thirty (30) calendar days of receipt. The RFI was mailed to the City of Newburgh, Department of Public Works at 88 Pierces Road, Newburgh, NY.
6. The United States Postal Service (“USPS”) verified via signed certified mail return receipt, that the RFI was received by Newburgh on October 7, 2011. Therefore, Newburgh was required to submit the requested information to EPA on or before November 6, 2011.
7. An EPA representative contacted Mr. Craig Marti, City Engineer for the City of Newburgh, on November 23, 2011 and November 30, 2011, to determine the status of the RFI submission. Follow up actions by EPA to contact Mr. Marti were made on December 9, 2011, December 14, 2011 and December 15, 2011 but were unsuccessful.
8. On December 20, 2011, EPA issued a formal Notice to the City of Newburgh, mailed to the 83 Broadway, Newburgh, NY address advising the City that the submission was overdue. The USPS verified, via signed certified mail return receipt, that the Notice was received by Newburgh on December 23, 2011.
9. To date, EPA has not yet received a submission from the City of Newburgh as required by the October 4, 2011 RFI.
10. Therefore, on the basis of the findings cited in the paragraphs above, the City of Newburgh is in violation of Section 308 of the CWA, for failure to submit information requested pursuant to Section 308 of the CWA.

C. Ordered Provisions

Based on the Findings of Violation set forth above, and pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to take the following actions:

1. Immediately upon receipt of the original copies of this Order, a responsible official of the City of Newburgh shall complete and sign one of the original Orders on the acknowledgment page


and return the acknowledgement page along with one of the originals of the Order by certified mail or its equivalent to the Chief, Water Compliance Branch, Division of Enforcement and Compliance Assistance at the address below.

2. A responsible official of the City of Newburgh, on Thursday, March 22, 2012 at 1:00 PM, shall appear at the following address to show cause before the Regional Administrator or her designee, why EPA should not file a complaint for the commencement of civil and/or criminal penalties as provided for by Section 309 of the CWA, 33 U.S.C. § 1319:

U.S. Environmental Protection Agency – Region 2
Water Compliance Branch
290 Broadway, 20th Floor
New York, New York 10007-1866
Contact: Mr. Douglas McKenna, Chief
Water Compliance Branch (212) 637-4244

D. General Provisions

1. This order does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the CWA, its implementing regulations, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of an Administrative Order shall not be deemed an election by EPA to forgo any civil or criminal actions that would seek penalties, fines or other appropriate relief under the CWA.
2. Notice is hereby given that violation of, or failure to comply with, any of the provisions of the foregoing Order may subject Respondent to (1) civil penalties up to \$37,500 per day for each violation, pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d); or (2) civil action in federal court for injunctive relief, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).
3. The terms of this Order shall be effective and enforceable against Respondent upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: February 29, 2012 Signed: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

City of Newburgh
83 Broadway
Newburgh, NY 12550

SPDES Permit No. NY0026310

Proceeding pursuant to Section 309(a) of
The Clean Water Act, 33 U.S.C. §1319(a)

RESPONDENT

**ORDER TO
SHOW CAUSE**

CWA-02-2012-3031

**ACKNOWLEDGEMENT OF RECEIPT OF
ORDER TO SHOW CAUSE**

I, _____, an officer of the City of Newburgh with the
title of, _____, do hereby acknowledge the receipt of a copy of the
ORDER TO SHOW CAUSE, CWA-02-2012-3031.

DATE: _____

SIGNED: _____